

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

No. 19-40534

OSCAR FERNANDEZ-MARTINEZ,

Debtor.

KATHRYN A. ELLIS, as Trustee for the
estate of Oscar Fernandez-Martinez,

Adv. No.

Plaintiff,

COMPLAINT TO RECOVER AVOIDABLE
TRANSFER

vs.

ALLY FINANCIAL INC., a Delaware
corporation doing business in the State of
Washington,

Defendant.

COMES NOW the Plaintiff, Kathryn A. Ellis, duly appointed and acting Trustee in the
above referenced matter and states and alleges as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff. Oscar Fernandez-Martinez filed a Chapter 7 Bankruptcy Petition on or
about February 27, 2019. Kathryn A. Ellis is the duly appointed and acting Chapter 7 Trustee of
such estate.

2. Defendant. The Defendant, Ally Financial Inc., is a Delaware corporation doing
business in the State of Washington.

3. This adversary proceeding is one arising in the Chapter 7 case of the above named

1 debtor now pending in this Court. This Court has jurisdiction over this adversary proceeding
2 pursuant to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §§ 547 and 550. This is a core proceeding
3 under 28 U.S.C. § 157 (b)(2)(A), (E), (F), (H) and (O).
4

5 **II. FACTS**

6 4. On or about December 5, 2015, Oscar Fernandez-Martinez, debtor herein, was
7 married to Iracema Avila Gonzalez in the State of Washington, a community property state, and
8 the parties remain married to this date.

9 5. On or about November 4, 2018, Iracema Avila Gonzalez, on behalf of the
10 marital community, purchased a 2013 Hyundai Santa Fe, VIN No. 5XYZU3LB8DG087690,
11 from Tacoma Subaru Inc., and financed by Ally Financial Inc. The debtor and Mrs. Gonzalez
12 were given possession of the vehicle on November 4, 2018 and the lien was not perfected until
13 December 13, 2018.
14

15 6. A security interest was granted to Defendant on account of an antecedent debt
16 owed by the marital community of the debtor, prior to the date the transfer was made; the
17 transfer was made while the debtor was insolvent and the transfer occurred within 90 days prior
18 to the filing of the debtor's Bankruptcy Petition and enabled Defendant to receive more than it
19 would have received from the Bankruptcy Court if the transfer had not been made.
20

21 7. On or about April 25, 2019 and May 9, 2019, the Trustee made demand upon
22 Defendant to return the transfer above referenced and Defendant has failed to respond in any
23 way. The purchase price and value of the vehicle at the time of filing was \$15,918.50.
24

25 **III. FIRST CAUSE OF ACTION**

26 8. By reason of the foregoing, Defendant is liable to the Plaintiff in the sum above
27
28

1 stated, plus for any other money or property transferred by the debtor to the Defendant within 90
2 days prior to the filing of the Bankruptcy Petition, and all payments made thereafter pursuant to
3 §§ 547 and 550 of the Bankruptcy Code.

4
5 9. Pursuant to 11 U.S.C. § 550, the Trustee requests avoidance of the lien and
6 surrender of the vehicle above referenced or a judgment for the value of such property as set
7 forth above.

8 WHEREFORE, the Plaintiff prays for judgment as follows:

- 9 a) For an order avoiding the lien in the 2013 Hyundai Santa Fe of Defendant;
10 b) For judgment against Defendant in the amount of \$15,918.50, or surrender of the
11 property;
12 c) For interest from the date of transfer, plus costs and reasonable attorney's fees;
13 and
14 d) For such further relief as the Court deems just in the premises.
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16 DATED this 24th day of May, 2019.

17
18 /s/ Kathryn A. Ellis

Kathryn A. Ellis, Plaintiff

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